

No. 11826

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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

ESTATE OF DANIEL GARTLING, Deceased,  
R. N. Weaver, Executor,  
Respondent.

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Transcript of the Record

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Upon Petition to Review a Decision of the Tax Court  
of the United States

FILED

MAY 21 1948

PAUL P. O'BRIEN,

CLERK



No. 11826

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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## APPEARANCES

For Taxpayer:

D. WEBSTER EGAN, Esq.,

For Commissioner:

A. J. HURLEY, Esq.

Docket No. 8795

DANIEL GARTLING,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.Amended Caption: Mar. 26, 1947 - Estate of  
Daniel Gartling, Deceased, R. N. Weaver,  
Executor.

## DOCKET ENTRIES

1945

- July 23 Petition received and filed. Taxpayer notified. Fee paid.
- July 23 Copy of petition served on General Counsel.
- Aug. 24 Answer filed by General Counsel.
- Aug. 24 Request for hearing in Los Angeles, Calif. filed by General Counsel.
- Aug. 27 Notice issued placing proceeding on Los Angeles, Calif. calendar. Service of answer and request made.

1946

- Dec. 6 Hearing set February 10, 1947, Los Angeles, California.
- Oct. 15 Motion to substitute name of executor for petitioner, filed by taxpayer.



1947

- Feb. 10 Hearing had before Judge Leech on merits. Stipulation of facts and certified copies of letters of testamentary filed at hearing. Petitioner's brief filed Feb. 10, 1947, and copies served on respondent. Respondent's brief due 3/24/47. Petitioner's reply due 4/10/47.
- Mar. 5 Transcript of hearing filed. Los Angeles, Calif. Feb. 10, 1947.
- Mar. 24 Reply brief filed by General Counsel.
- Mar. 26 Order that caption of the above proceeding be amended to read, "Estate of Daniel Gartling, Dec'd., R. N. Weaver, Executor," now for then, entered.
- Apr. 14 Reply brief filed by taxpayer. Copy served.
- July 28 Memorandum opinion rendered, Judge Leech. Decision will be entered under Rule 50. Copy served.
- Aug. 27 Respondent's computation for entry of decision filed.
- Aug. 29 Hearing set September 24, 1947 on settlement.
- Sept. 4 Consent to settlement filed.
- Sept. 5 Decision entered. Judge Leech. Div. 6.
- Nov. 28 Petition for review by U. S. Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by General Counsel.
- Dec. 9 Proof of service of petition for review on R. N. Weaver, Executor, filed.

1947

- Dec. 9 Proof of service of petition for review on Attorney for taxpayer filed.
- Dec. 15 Statement of points filed by General Counsel with proof of service thereon.
- Dec. 15 Agreed designation of portions of the record to be printed filed.
- Dec. 15 Designation of record filed by General Counsel with service admitted thereon. [1\*]
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The Tax Court of the United States  
Docket No. 8795

DANIEL GARTLING,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## PETITION

The above-named petitioner hereby appeals from the determination of the Commissioner of Internal Revenue, set forth in his deficiency letter, (LA-IT-90D-PB), dated May 17th, 1945, and as the basis of his appeal sets forth the following:

## I.

That petitioner is a resident of the City of Los Angeles, County of Los Angeles, State of California.

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\* Page numbering appearing at foot of page of Reporter's certified Transcript of Record.

II.

That the deficiency letter (a copy of which is attached), was mailed to petitioner on May 17th, 1945, and states a deficiency of \$2590.87.

III.

That the taxes in controversy are federal income tax for the calendar year 1941.

IV.

That the determination of the taxes contained in said deficiency letter is based upon the following errors.

- (a) The respondent proposes to assess a tax on a net gain [2] of \$13,321.00, resulting from the sale of one-sixth ( $1/6$ ), interest of taxpayer's three-sixth's ( $3/6$ 's), interest in and to the property and assets of the California Well Tool & Machine Works, a partnership to each Dorothy J. West and Wm. M. Craft.
- (b) That one-half of net gain, to wit, \$6660.50, only is subject to tax the sale in question being a long-term capital gain.

V.

The facts upon which petitioner relies as the basis of his appeal are as follows:

That during the year 1941, taxpayer sold to Dorothy J. West and Wm. M. Craft, two-sixth's ( $2/6$ 's), of his undivided three-sixth's ( $3/6$ 's), interest in and to the property and assets of the

California Well Tool & Machine Works, a partnership, for the sum of \$24,000.00, resulting in a net gain of the sum of \$13,321.00.

Wherefore, petitioner prays that this Court determine that one-half only of the net gain of the sum of \$13,321.00, is subject to tax for the calendar year 1941.

DANIEL GARTLING,  
Petitioner.

D. WEBSTER EGAN,  
Attorney for petitioner,  
403 West 8th Street,  
Los Angeles 14, Calif.

State of California,  
County of Los Angeles—ss.

Daniel Gartling, being first duly sworn, on oath, deposes and says; that he is the petitioner in the above-entitled appeal; [3] that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief and as to those matters that he believes it to be true.

DANIEL GARTLING,

Subscribed and sworn to before me this 12th day of July, 1945.

FRANK LOBER,  
Notary Public in and for the County of Los Angeles, State of California. [4]

(Copy)

Treasury Department, Internal Revenue Service,  
417 South Hill Street, Los Angeles 13, California.

May 17th, 1945

Office of Internal Revenue Agent in Charge, Los  
Angeles Division. LA: IT: 90D-PB.

Mr. Daniel Gartling,  
5133 Highland View Avenue,  
Los Angeles 14, California.

Dear Mr. Gartling:

You are advised that the determination of your income tax liability for the taxable year ended December 31st, 1941, discloses a deficiency of \$2,-590.87, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day), from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return (x), by permitting an

early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, Jr.,

Commissioner,

By GEORGE D. MARTIN,

Internal Revenue Agent in  
Charge.

Enclosures

Statement

Form of waiver.

Statement

LA:IT:90D-PB Mr. Daniel Gartling,  
5133 Highland View Avenue,  
Los Angeles 14, California.

Tax Liability for the Taxable Year Ended December 31, 1941.

	Liability	Assessed	Deficiency
Income Tax.....	\$4596.60	\$2005.73	\$2590.87

In making this determination of your income tax liability careful consideration has been given to the report of examination dated August 28, 1944, to your protest dated October 25, 1944, and to the statements made at the conference held.

A copy of this letter and statement has been mailed to your representative Mr. D. Webster Egan, 403 West 8th Street, Los Angeles 14, California, in accordance with the authorization contained in the power of attorney executed by you.



## Adjustment of Net Income

Net income as disclosed by return.....	\$ 5,782.82
Additional income: Gain from sale.....	13,321.00
	<hr/>
	\$19,103.82

## Explanation of Adjustment

The gain resulting from the sale one-sixth ( $1/6$ ) interest of your three-sixth ( $3/6$ ), interest in and to the property and assets of the California Well Tool & Machine Works, to each Dorothy J. West and Wm. M. Craft, in the amount of \$13,321.00, has been held to represent ordinary income includible in taxable income in the full amount. [6]

You did not report this transaction in your return, but in an amended return filed on July 9th, 1943, you reported a long-term capital gain of \$5,993.83 from this sale.

## Computation of Tax

Net Income adjusted.....	\$19,103.82
Less: personal exemption.....	750.00
	<hr/>
Balance (surtax net income).....	\$18,353.82
Less: earned income credit.....	300.00
	<hr/>
Net income subject to normal tax.....	\$18,053.82
Normal tax at 4% on \$18,053.82.....	\$ 722.15
Surtax on \$18,353.82.....	3,874.45
Total income tax.....	\$ 4,596.60
Correct income tax liability.....	\$ 4,596.60
Income tax assessed	
Original, account No. 939694.....	\$ 623.58
Amended, account No. Oct. 900560.....	1,382.15
	<hr/>
Deficiency of income tax.....	\$ 2,590.87

Received and filed July 23, 1945,

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I, II, and III.

Admits the allegations contained in paragraphs I, II, and III of the petition.

IV (a) and (b).

Denies the allegation of error contained in subparagraphs (a) and (b) of paragraph IV of the petition.

V.

Admits the allegations contained in paragraph V of the petition.

VI.

Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied. [8]

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL, ECC

Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT, Division Counsel.

E. C. CROUTER,

A. J. HURLEY,

Special Attorneys,

Bureau of Internal Revenue.

AJH:ma 8/17/45

Received and filed Aug. 24, 1945. [9]



The Tax Court of the United States

Docket No. 8795

ESTATE OF DANIEL GARTLING, Deceased,  
R. N. WEAVER, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Decedent, more than 10 years prior to the taxable year 1941, acquired a three-sixths interest in a California partnership. In 1941 he sold an undivided two-sixths interest at a net gain of \$13,321. Held, a partner's interest in a partnership is a capital asset, the sale of which results in a capital gain or loss, taxable as provided in section 117, I.R.C.

D. Webster Egan, Esq., for the petitioner.

A. J. Hurley, Esq., for the respondent.

### MEMORANDUM OPINION

Leech, Judge:

This controversy involves a deficiency in income tax for the year 1941 in the amount of \$2,590.87. The only issue is whether the [10] gain realized by decedent from the sale of two-sixths of an undivided three-sixths interest in a partnership is a capital gain or an ordinary gain for Federal income tax purposes. All the facts have been stipulated and are adopted as our findings of fact. They may be summarized as follows:

Petitioner is the duly appointed executor of the estate of Daniel Gartling, deceased. The decedent, a resident of the City of Los Angeles, filed his income tax return for the taxable period with the collector of internal revenue for the sixth district of California, at Los Angeles, California.

On January 2, 1941, and for many years prior thereto, the decedent was the owner of an undivided three-sixths interest in the copartnership of California Well Tool and Machine Works organized under the laws of the State of California. On January 2, 1941, the decedent sold two-thirds of his three-sixths interest in such partnership for the sum of \$24,000. The decedent's cost basis of the interest sold was \$10,679, resulting in a net profit of \$13,321.

Petitioner contends that the sale of the fractional part of decedent's partnership interest constituted the sale of a "capital asset", and since decedent held the same for more than 10 years, only 50 per centum of such gain is to be taken into account under section 117 of the Internal Revenue Code. The respondent contends that for Federal income tax purposes a partnership is not a juristic entity, but is an association of individuals, each of whom is vested with an interest in each specific asset of the partnership. He argues that petitioner has failed to establish the nature and character of the component assets of the partnership. [11]

We think the position taken by petitioner is the correct one. The respondent concedes the law of California is controlling, and that the Uniform Partnership Act has been adopted and is in force in that state.

In the recent case of *George Whitney*, 8 T.C. (May 14, 1947), we passed upon the nature of a partnership interest. We there held that the partnership and not the individual partners owned the partnership assets. We said:

\* \* \* The interests of the several partners in the partnership were merely the respective shares of the profits and surplus, less its obligations. *New York Partnership Law*, sec. 52.<sup>1</sup> Cf. *Robert E. Ford*, 6 T.C. 499;<sup>4</sup> *Allan S. Lehman*, 7 T.C. 1088; *Blodgett v. Silberman*, 277 U.S. 1; *Case v. Beauregard*, 99 U.S. 119. \* \* \*

A partnership interest has repeatedly been held to be a capital asset. *Commissioner v. Shapiro*, 125 Fed. (2d) 532; *Stilgenbaur v. United States*, 115 Fed. (2d) 283; *Dudley T. Humphrey*, 32 B.T.A. 280; *Allan S. Lehman*, 7 T.C. 1088. The decedent having sold only an undivided portion of his partnership interest, the gain resulting therefrom is a capital gain. The holding period was in excess of 10 years. Under section 117 of the Code, only 50 per centum of such gain is taxable. The stipulated net gain realized by the decedent, by reason of respondent's adjustment to decedent's cost basis, is in excess of that reported on his income tax return for the taxable year involved; therefore

Decision will be entered under Rule 50.

Entered July 28, 1947. [12]

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<sup>1</sup> Sec. 26, Uniform Partnership Act, in effect in California, is the same as Sec. 52, N.Y. Partnership Law.

<sup>4</sup> Respondent acquiesces, C.B. 1946-2, p. 2.

The Tax Court of the United States  
Washington

Docket No. 8795

ESTATE OF DANIEL GARTLING, Deceased,  
R. N. Weaver, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DECISION

Pursuant to the Memorandum Opinion of the Court entered in the above-entitled proceeding July 28, 1947, the respondent having filed his computation herein on August 27, 1947, and the petitioner having filed his acquiescence therein on September 4, 1947, it is hereby

Ordered and decided: That there is a deficiency in income tax for the year 1941 of \$193.33.

Enter:

[Seal]      /s/ J. RUSSELL LEECH,  
Judge.

Entered Sept. 8, 1947. [13]

In the United States Circuit Court of Appeals  
For the Ninth Circuit

Docket No. 8795

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,  
vs.

ESTATE OF DANIEL GARTLING, Deceased,  
R. N. Weaver, Executor,  
Respondent on Review.

#### PETITION FOR REVIEW

To the Honorable Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit.

The Commissioner of Internal Revenue hereby petitions the United States Circuit Court of Appeals for the Ninth Circuit to review the decision entered by the Tax Court of the United States on September 8, 1947, ordering and deciding that there is a deficiency in income tax of \$193.33 for the calendar year of 1941. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The decedent, Daniel Gartling, filed his individual income tax return for the calendar year 1941 with the Collector of Internal Revenue for the Sixth District of California, whose office is located at Los Angeles, California, and within the judicial circuit of the United States Circuit Court of Appeals for the Ninth Circuit, where this review is sought. [14]

### Nature of Controversy

The question involved is whether the gain realized by decedent from the sale of an undivided two-sixths interest in and to the property and assets of the partnership represents capital gain or ordinary gain for Federal income tax purposes.

On January 2, 1941, and for many years prior thereto, the decedent was the owner of an undivided three-sixths interest in the copartnership of California Well Tool and Machine Works organized under the laws of the State of California. On January 2, 1941, the decedent sold two-thirds of his three-sixths interest in and to the property and assets of the said partnership for the sum of \$24,000. The decedent's cost basis of the interest sold was \$10,679, resulting in a net profit of \$13,321.

In his notice of deficiency the Commissioner held that the gain from the sale represents ordinary income includible in taxable income in the full amount. The Tax Court, however, held that a partnership interest is a capital asset, and the decedent having sold only an undivided portion of his partnership interest, the gain resulting therefrom is a capital gain, and, since the holding period was in excess of ten years, only fifty per centum of such gain is taxable under Section 117 of the Internal Revenue Code.

/s/ THERON L. CAUDLE, CAR

Assistant Attorney General.

/s/ CHARLES OLIPHANT, CAR

Chief Counsel,

Bureau of Internal Revenue,

Counsel for Petitioner on Review.

Received and filed TCUS Nov. 28, 1947. [15]



[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To: Mr. R. N. Weaver, Executor, Estate of Daniel  
Gartling, Deceased.

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of November, 1947, file with the Clerk of the Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 28th day of November, 1947.

/s/ CHARLES OLIPHANT, CAR

Chief Counsel,

Bureau of Internal Revenue,

Counsel for Petitioner on Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review, is hereby acknowledged this ....day of December, 1947.

/s/ R. N. WEAVER,

Executor, Estate of Daniel

Gartling, Deceased,

Respondent on Review.

Received and filed TCUS Dec. 9, 1947.

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To: D. Webster Egan, Esq., 403 West Eighth Street,  
Los Angeles 14, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of November, 1947, file with the Clerk of the Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 28th day of November, 1947.

/s/ CHARLES OLIPHANT, CAR

Chief Counsel,

Bureau of Internal Revenue,

Counsel for Petitioner on Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review, is hereby acknowledged this 1st day of December, 1947.

/s/ D. WEBSTER EGAN,

Counsel for Respondent on  
Review.

Received and filed Dec. 9, 1947. [17]



The Tax Court of the United States

Docket No. 8795

ESTATE OF DANIEL GARTLING, Deceased,  
R. N. Weaver, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### STIPULATION OF FACTS

Petitioner and respondent in the above-entitled proceeding, through their respective counsel of record, hereby stipulate and agree upon the facts hereinafter set forth and do hereby submit said proceeding for decision upon the basis of this stipulation, without prejudice, however, to the right of either party to offer other or additional evidence not inconsistent herewith.

1. The petitioner is the duly appointed executor of the Estate of Daniel Gartling, Deceased.

2. On January 2, 1941, and for many years prior thereto the decedent, Daniel Gartling, was the owner of a one-half interest in a certain partnership organized under the laws of California and composed of the said Daniel Gartling and his brother, George Gartling. The partnership was engaged in the manufacturing of steel forgings and doing business under the name of California Well Tool and Machine Works. The assets of the partnership consisted chiefly of the plant, machinery, inventories

and accounts receivable. There is attached hereto and made a part hereof as Exhibit 1-A a copy of the balance sheet of the partnership as of December 31, 1940.

3. On January 2, 1941, the decedent sold two-thirds of his one-half interest in and to the property and assets of the said partnership to Dorothy J. West and William M. Croft for the sum of \$24,000.00. The basis to the decedent of the interest sold was \$10,679.00, resulting in a net profit on the transaction of \$13,321.00.

4. Copies of the bills of sale executed by the decedent and the parties of the second part, relative to the sale of this portion of the interest of the decedent in the assets of the partnership to Dorothy J. West and William M. Croft, are attached hereto and made a part hereof as Exhibits 2-B and 3-C respectively. There is also attached hereto and made a part hereof, as Exhibit 4-D, a copy of the new partnership agreement executed by Daniel Gartling, George Gartling, William M. Croft and Dorothy J. West.

5. The decedent in his individual income-tax return for the calendar year 1941, filed with the Collector of Internal Revenue for the Sixth Collection District at Los Angeles, failed to report the sale of any portion of his partnership interest. On July 9, 1943, however, the decedent filed with said Collector an amended return on which he reported a long-term capital gain [19] in the amount of \$5,993.83, resulting from the transaction above described.

6. The respondent in arriving at his determination reduced the basis of decedent's partnership interest as reported on his amended return by \$1,333.34 and further held that the resulting profit in the amount of \$13,321.00 represented ordinary income includible in taxable income in the full amount. It is conceded by the petitioner that the basis reported by the decedent in his amended return was erroneous and the only question remaining for decision is whether the profit resulting from the transaction should be taxed as long-term capital gain or as ordinary income.

/s/ D. WEBSTER EGAN,

Counsel for Petitioner.

/s/ J. P. WENCHELL, ECC

Chief Counsel, Bureau of Internal Revenue,

Counsel for Respondent. [20]

AJH/vp 2/5/47.

## EXHIBIT 1-A

## CALIFORNIA WELL TOOL AND MACHINE WORKS

Balance Sheet—December 31, 1940

## Assets—Current:

Cash in Bank—Security.....	\$ 6,143.99	
Cash in Bank—Citizens.....	9,968.51	
Accounts Receivable.....	26,285.72	
Inventory—Merchandise .....	21,096.27	
Advance to Partners, Etc.....	3,784.20	
		<hr/>
		\$67,278.69

## Assets—Fixed:

Machinery and Tools .....	\$112,869.35	
Machinery and Tools, Additional..	494.16	
Furniture and Fixtures.....	967.66	
Furniture and Fixtures, Additional .....	24.00	
		<hr/>
		\$114,355.17

## Less:

Reserve for Depreciation—

Mach. &amp; Tools.....\$111,817.93

Reserve for Depreciation—

Furn. &amp; Fixts..... 757.45      112,575.38      1,779.79

## Assets—Miscellaneous:

Petty Cash Fund.....	\$ 75.00	
Prepaid Accounts.....	179.56	
Insurance Deposit .....	341.45	596.01
		<hr/>
Total Assets.....		\$69,654.49

Liabilities and Capital:

Accounts Payable .....	\$	3,529.32	
Accrued Payroll .....		326.82	
Notes Payable .....		1,785.35	
Notes Payable—I. D. Gartling.....		24,000.00	
State Sales Tax.....		127.88	
State Employment Department....		308.90	
Federal Social Security.....		168.36	
Accrued Federal Unemployment..		113.53	
Accrued Compensation Insurance		101.12	
		<hr/>	
Total Liabilities.....			\$30,461.28
Capital—Daniel Gartling,			
Jan. 1, 1940.....	\$	16,026.95	
Capital—Geo. L. Gartling,			
Jan. 1, 1940.....		16,026.95	
		<hr/>	
Total Investment—Jan. 1, 1940....	\$	32,053.00	
Less: Cost of Liquidating I. D. Gart-			
ling Equity.....		5,826.93	
		<hr/>	
	\$	26,226.97	
Plus: Surplus from Life			
Ins. Gross Rec'd.....	\$	10,000.00	
Less: Payments to Partners	6,000.00	4,000.00	
		<hr/>	
Total .....	\$	30,226.97	
Plus: Undivided Surplus,			
Jan. 1, 1940–Dec. 31, '40..	\$	11,474.64	
Less: Dividend Paid—			
I. D. Gartling.....	2,508.40	8,966.24	39,193.21
		<hr/>	
Total Liabilities and Capital.....			<hr/> <hr/> \$69,654.49

EXHIBIT 2-B  
BILL OF SALE

This agreement made and entered into this 2nd day of January, 1941, by and between Daniel Gartling, party of the first part and Dorothy J. West party of the second part.

Witnesseth:

Whereas, Daniel Gartling, is the owner of an undivided three-sixths ( $3/6$ ), interest in and to all of the property and assets of the California Well Tool & Machine Works, a partnership, doing business in the City of Los Angeles, County of Los Angeles, State of California.

Now, therefore, for and in consideration of the sum of twelve thousand (\$12,000.00), dollars, the party of the first part, does by these presents grant, bargain, sell and convey unto the party of the second part, his executors, administrators and assigns an undivided one-sixth ( $1/6$ ), interest in and to the property and assets of the California Well Tool & Machine Works, a partnership, doing business at Los Angeles, California.

It is understood and agree by the parties hereto that said indebtedness, shall be evidenced by a promissory note in the principal sum of twelve thousand (\$12,000.00) dollars bearing interest at the rate of five (5%), per cent per annum and payable out of second party's profits earned from this undivided interest in and to all of the property and assets of the California Well Tool & Machine Works, a partnership.

DANIEL GARTLING.  
DOROTHY J. WEST.



EXHIBIT 3-C  
BILL OF SALE

This agreement made and entered into this 2nd day of January, 1941, by and between Daniel Gartling, party of the first part and Wm. M. Croft, party of the second part.

Witnesseth:

Whereas, Daniel Gartling, is the owner of an undivided three-sixths ( $3/6$ ), interest in and to all of the property and assets of the California Well Tool & Machine Works, a partnership, doing business in the City of Los Angeles, County of Los Angeles, State of California.

Now, therefore, for and in consideration of the sum of twelve thousand, (\$12,000.00), dollars, the party of the first part, does by these presents grant, bargain, sell and convey unto the party of the second part, his executors, administrators and assigns an undivided one-sixth ( $1/6$ ), interest in and to the property and assets of the California Well Tool & Machine Works, a partnership, doing business at Los Angeles, California.

It is understood and agreed by the parties hereto that said indebtedness, shall be evidenced by a promissory note in the principal sum of twelve thousand (\$12,000.00) dollars bearing interest at the rate of five (5%), per cent per annum and payable out of second party's profits earned from this undivided interest in and to all of the property and assets of the California Well Tool & Machine Works, a partnership.

DANIEL GARTLING.  
WM. M. CROFT. [21]

EXHIBIT 4-D  
ARTICLES OF CO-PARTNERSHIP

This agreement made this 2nd day of January 1941, by and between Daniel Gartling, George L. Gartling, William Croft, and Dorothy J. West.

Witnesseth:

Whereas, Daniel Gartling and George L. Gartling are the remaining partners of the California Well Tool & Machine Works, a partnership, by reason of the death of Ida D. Gartling, and

Whereas, the said Daniel Gartling and George L. Gartling, have agreed to admit as incoming partners William Croft and Dorothy J. West.

Now, therefore, it is agreed by said parties as follows:

That said partnership shall commence on the 2nd day of January 1941, and continue until the 2nd day of January 1946, unless terminated by mutual consent or by death of any of the partners.

That the book value of the capital of said partnership as of January 1st, 1941, is the sum of \$36037.01, of which Daniel Gartling is the owner of \$18018.51 and George L. Gartling is the owner of \$18018.50, the said Daniel Gartling having sold to William Croft and Dorothy J. West two-sixths' of said mentioned undivided interest in and to the property and assets of said partnership, and by reason thereof said interests of the respective partners are as follows to-wit:

George L. Gartling, an undivided three-sixth's; Daniel Gartling, an undivided one-sixth; William Croft, an undivided one-sixth and Dorothy J. West, an undivided one-sixth.



The said partners, (with the exception of Dorothy J. West), at all times during the continuance of the partnership, shall give their attendance, and to the utmost of their skill and power exert themselves in the conduct and management of the firm's business for the joint interest, profit, benefit and advantage of all of the parties herein.

That during the continuance of said partnership all rents and other expenses that may be required for the support, management and conduct of said business shall be paid from the gross [24] income thereof, and in the event that said gross income is insufficient to pay said expenses, said partners shall bear, pay and discharge as their interest appear the balance of said expenses remaining unpaid on the first day of January of each and every year during the continuance of said partnership.

That there shall be kept at all times regular books of account of the business of said firm, and each of the partners shall have, at all times, access to all such books of accounts and the accounts of said firm, and on the first day of January, each year, a true inventory and account of all the profits and increase of the business and all losses sustained during the preceding year shall be made and submitted to each of the said partners, and the profits, if any, shall be divided as follows:

To George L. Gartling, fifty (50%) per centum thereof.

To Daniel Gartling, sixteen and two-thirds, ( $16\frac{2}{3}$ ), per centum thereof:

To William Croft, sixteen and two-thirds ( $16\frac{2}{3}$ ), per centum thereof:

To Dorothy J. West, sixteen and two-thirds ( $16\frac{2}{3}$ ), per centum thereof.

That in the event any of said partners at any time desire to sell or otherwise dispose of his, or her, interest in said partnership, he or she shall and hereby does give the other partners a first option for the purchase thereof at a price not less than the book value of said interest as shown by the books of account of said firm; said option shall continue in force and effect for a period of ten (10) days after notice in writing served on each other partner or by U. S. Registered Mail addressed to them at their last known residence address, of said partner's proposed withdrawal from said firm; and in the event any partner shall dispose of his, or her, interest to the other partners or any of them, said business shall be carried on by the remaining partners and said profits and losses, shall be shared by said remaining partners, as their interests appear.

Said partnership shall be continued under the fictitious firm name of "California Well Tool & Machine Works."

That in the event of dissolution of said partnership, said partners shall make a true and just accounting of said business and profits, each to the other, and the same, and all the holdings, property, fixtures and appurtenances thereof shall be divided to said partners as follows: [25]

To George L. Gartling, fifty (50%) per centum thereof:

To Daniel Gartling, sixteen and two-thirds ( $16\frac{2}{3}$ ) per centum thereof.

To William Croft, sixteen and two-thirds, ( $16\frac{2}{3}$ ), per centum thereof.

To Dorothy J. West, sixteen and two-thirds, ( $16\frac{2}{3}$ ) per centum thereof.

In witness whereof, the parties hereto have set their hands, the day and year first above written.

DANIEL GARTLING

GEORGE L. GARTLING

WILLIAM CROFT

DOROTHY J. WEST

Filed Feb. 10, 1947. [26]

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

Docket No. 8795

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

ESTATE OF DANIEL GARTLING, Deceased,  
R. N. WEAVER, Executor,  
Respondent on Review.

### STATEMENT OF POINTS

Comes now the petitioner on review herein, by his counsel of record, and makes this concise state-

ment of points on which he intends to rely on the review herein, to wit:

The Tax Court of the United States erred:

1. In holding that the gain resulting from the sale by the decedent of two-thirds of his undivided three-sixths interest in and to the property and assets of the partnership is a capital gain, and that, since the holding period was in excess of ten years, only fifty per centum of such gain is taxable under section 117 of the Internal Revenue Code.

2. In failing to uphold the Commissioner's determination that the gain resulting from the sale by the decedent of two-thirds of his undivided three-sixths interest in and to the property and assets of the partnership represents ordinary income includible in taxable income in the full amount.

3. In holding that there is a deficiency in income tax for [27] year 1941 of only \$193.33, and in failing to hold that there is a deficiency of \$2,590.87 as determined by the Commissioner.

4. In holding that a partnership interest is a capital asset.

5. In failing to hold that a purported sale of a partnership interest constitutes a sale by an individual partner of his interest in the assets of the partnership, and that the burden falls upon the taxpayer to establish the nature, character, basis and holding period of the component assets and that his failure to do so requires that the Commissioner's determination be sustained.

6. In failing to hold in the instant case that the assets of the partnership are of a character which, if sold by an individual, would result in ordinary gain or loss.

7. In that its memorandum opinion and decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE, CAR  
Assistant Attorney General.

/s/ CHARLES OLIPHANT, CAR  
Chief Counsel,  
Bureau of Internal Revenue,  
Counsel for Petitioner on Review.

Service of a copy of the above statement of points is hereby acknowledged this 8th day of Dec., 1947.

/s/ D. WEBSTER EGAN,  
Counsel for Respondent on Review.

Received and filed TCUS Dec. 15, 1947. [28]

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[Title of Circuit Court of Appeals and Cause.]

## DESIGNATION OF PORTIONS OF THE RECORD TO BE PRINTED

Comes now the petitioner on review herein, by his counsel of record, and complying with the rules of this Court, pertaining to the designation of the portions of the record to be printed, states that he relies upon the entire record certified by the Clerk

of The Tax Court of the United States, and directs that said record so certified be printed as the record on review.

/s/ THERON L. CAUDLE, CAR  
Assistant Attorney General.

/s/ CHARLES OLIPHANT, CAR  
Chief Counsel,  
Bureau of Internal Revenue,  
Counsel for Petitioner on Review.

Consented to:

/s/ D. WEBSTER EGAN,  
Counsel for Respondent on Review.

Received and filed TCUS Dec. 15, 1947.

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[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON REVIEW

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause, in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries.
2. Pleadings:
  - (a) Petition
  - (b) Answer



3. Memorandum opinion and decision of the Tax Court.
4. Petition for review.
5. Notices of filing petition for review.
6. Stipulation of facts and exhibits attached thereto.
7. Statement of points.
8. Designation of portions of record to be printed.
9. This designation.

/s/ THERON L. CAUDLE, CAR  
Assistant Attorney General.

/s/ CHARLES OLIPHANT, CAR  
Chief Counsel,  
Bureau of Internal Revenue,  
Counsel for Petitioner on Review.

Service of a copy of the within designation of contents of record on review is hereby admitted this 8th day of Dec., 1947.

/s/ D. WEBSTER EGAN,  
Counsel for Respondent on Review.

Received and filed TCUS Dec. 15, 1947. [31]

The Tax Court of the United States, Washington

Docket No. 8795

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

ESTATE OF DANIEL GARTLING, Deceased,  
R. N. Weaver, Executor,  
Respondent.

### CERTIFICATE

I, Victor S. Mersch, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 31, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 29th day of December, 1947.

[Seal]      /s/ VICTOR S. MERSCH, EMT  
Clerk, the Tax Court of the  
United States.



[Endorsed]: No. 11826. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Estate of Daniel Gartling, Deceased, R. N. Weaver, Executor, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed January 3, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

